

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 35D.3, the Commission of Veterans Affairs amends Chapter 10, "Iowa Veterans Home," Iowa Administrative Code.

These amendments reflect changes made by new legislation effective July 1, 2009, relating to the rights and responsibilities of Iowa Veterans Home members (discharge and appeal criteria). Also, the U.S. Department of Veterans Affairs amended its regulations that set forth a mechanism for paying per diem to state homes providing nursing home care to eligible veterans, updated the basic per diem rate to implement provisions of the Veterans Benefits, Health Care, and Information Technology Act of 2006, and made several other changes to better ensure that veterans receive quality care in state homes. The U.S. Department of Veterans Affairs' effective date for the amended regulations was May 29, 2009. In addition, new federal regulations eliminated the 96-hour pass practice and established a new bed hold policy. The U.S. Department of Veterans Affairs now pays per diem only for the first 10 consecutive days for which the veteran is hospitalized and for the first 12 days in a calendar year during which the veteran is absent for reasons other than to receive hospital care.

Pursuant to Iowa Code section 17A.4(3), the Commission of Veterans Affairs finds that notice and public participation are unnecessary because the effective date is mandated by 2009 Iowa Acts, Senate File 407, and Public Law 109-461.

Pursuant to Iowa Code section 17A.5(2)"b"(1), the Commission of Veterans Affairs further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective July 10, 2009. This effective date is mandated by 2009 Iowa Acts, Senate File 407, and Public Law 109-461.

These amendments are intended to implement Iowa Code chapter 35D, 2009 Iowa Acts, Senate File 407, and Public Law 109-461.

These amendments became effective July 10, 2009.

The following amendments are adopted.

ITEM 1. Adopt the following new definitions of "Collaborative care plan" and "Interdisciplinary resident care committee" in rule **801—10.1(35D)**:

"*Collaborative care plan*" means the plan of care developed for a member by the interdisciplinary resident care committee.

"*Interdisciplinary resident care committee*" or "*IRCC*" means the member, a social worker, a registered nurse, a dietitian, a medical provider, a recreation specialist and other staff, as appropriate, who are involved in reviewing a member's assessment data and developing a collaborative care plan for the individual member.

ITEM 2. Amend rule **801—10.1(35D)**, definition of "Free time," as follows:

"*Free time*" means ~~45~~ 12 days of ~~furlough~~ leave time each calendar year for which the member is not charged for care during absence.

ITEM 3. Amend paragraph **10.4(5)"d"** as follows:

d. ~~If planned~~ Following the applicant's admission is to a Title XIX certified area nursing care unit, the PASARR ~~must be~~ is completed and approval obtained prior to admission.

ITEM 4. Rescind paragraph **10.14(3)"b."**

ITEM 5. Amend paragraphs **10.14(3)"c"** and **"d"** as follows:

~~c. b.~~ All ~~furlough~~ leave days in excess of the ~~45~~ 12 free days up through the fifty-ninth ~~furlough~~ leave day. Any ~~furlough~~ leave days in excess of 59 days shall be considered billable, but the member must pay the full member support, not the amount determined by resources.

~~d. c.~~ The first ten days of each hospitalization. On the eleventh day the member's bed shall be held without charge until the termination of hospital stay and member returns to IVH. A hospital stay may occur more than once in a calendar year.

ITEM 6. Amend paragraph **10.15(1)“a,”** introductory paragraph, as follows:

a. ~~Nursing and infirmary levels~~ level of care.

ITEM 7. Amend subrule 10.15(2) as follows:

10.15(2) Veteran members not living on Title XIX certified units and those living on Title XIX certified units but not eligible for Title XIX medical assistance for whom IVH receives a per diem from the U.S. DVA (under Title 38). IVH shall consider this per diem as a third-party reimbursement to the charge for care and shall be an offset to the member support bill. The offset of the per diem received (billed to DVA) shall be shown as an offset for the month billed. The provisions of 38 U.S.C. 1745(a), which were established by Section 211 of the Veterans Benefits, Health Care, and Information Technology Act of 2006 (Public Law 109-461), set forth a mechanism for paying a higher per diem rate for certain veterans who have service-connected disabilities and are receiving nursing home care in state homes.

ITEM 8. Amend paragraph **10.16(2)“d”** as follows:

d. *Assets of a married member with spouse living in the community.* When liquid assets not exempted in paragraph “a” above are equal to or exceed \$2,000, those liquid assets shall be considered an available resource for the payment of member support. These assets shall be considered available for payment of member support until such time that the remaining liquid assets total less than \$500, but leaving at least \$140.

The assets attributed to the member shall be ~~one-half of~~ determined from the documented assets of both the member and spouse living in the community as of the first day of admission to IVH ~~after the first \$24,000 is exempted for the community spouse.~~ All resources of both the member and the spouse shall be added together. However, if one-half of the If the total resources is are less than \$24,000 (the amount set by 441 IAC 75.5(3) “d” and “f,” Public Law 100-365 and Public Law 100-485), then that amount shall be protected for the spouse living in the community. If applicable, the next \$24,000 shall be awarded to the member. Any resources over \$48,000 shall be split one-half to the member and one-half to the spouse up to a predetermined amount set by the department of human services. All resources over the predetermined amount shall be awarded to the member. Other resources attributed to the spouse living in the community shall be determined by the department of human services through the attribution process.

(1) to (3) No change.

ITEM 9. Amend rule **801—10.36(35D)**, catchwords, as follows:

801—10.36(35D) Passes, furloughs, Leave and ~~room retention~~ bed holds.

ITEM 10. Amend paragraph **10.36(1)“a”** as follows:

a. Members are free to leave IVH grounds unless contraindicated by medical determination. In cases where it is determined to be medically contraindicated and a member chooses to leave, the member or legal representative must sign “Discharge/~~Furlough~~ Leave Against Medical Advice,” Form 475-0940.

ITEM 11. Amend paragraph **10.36(1)“b”** as follows:

b. ~~Passes~~ Leaves are required if the member expects to be absent past midnight. ~~A pass shall not exceed 96 hours. If a member expects to be gone more than 96 hours, a furlough is required.~~

ITEM 12. Rescind paragraph **10.36(1)“c.”**

ITEM 13. Amend paragraph **10.36(1)“d”** as follows:

~~d. c.~~ All ~~furloughs~~ leaves other than free time shall require payment of member support charges as though the member were in residency. Failure to pay regular member support charges shall result in discharge of the member. ~~Furlough~~ Leave length may be changed by notification from the member or legal representative to the nursing unit social worker or domiciliary office.

ITEM 14. Amend paragraph **10.36(1)“e”** as follows:

~~e. d.~~ Medical furloughs Hospital leaves. ~~Furloughs~~ Leaves spent in approved medical facilities away from IVH shall not be counted against the 59-day ~~furlough leave~~ time limit as set out in paragraph 10.14(3)“~~e.~~”“b.”

Hospital ~~furloughs~~ leaves shall be granted and the charges for such ~~furloughs~~ leaves shall be as follows: During the first ten days of any hospital stay, the member shall pay the regular and usual assessed charge of the level of care of the bed held. Beginning on the eleventh day through the remainder of the hospitalization, the member shall not be charged. Each monthly member support bill shall reflect any adjustments related to hospitalization. Members discharged while on leave from IVH shall have the account closed before the first of the month following the discharge.

~~Furloughs~~ Leaves to other medical facilities for the purpose of treatment shall be treated as hospital ~~furloughs~~ leaves.

ITEM 15. Amend paragraph **10.36(1)“f”** as follows:

~~f. e.~~ General furloughs leaves.

- (1) ~~Fifteen~~ Twelve days of ~~furlough leave~~ time each calendar year shall be free time.
- (2) The member shall be charged the usual support charge for ~~furlough leave~~ time over ~~15~~ 12 days up to and including 59 days.
- (3) The member shall be charged the full member support for the level of care in which the member resides for ~~furlough leave~~ time over 59 days.
- (4) ~~Free time and other furlough~~ Leave time ~~are~~ is not cumulative from one calendar year to another calendar year.
- (5) ~~Free~~ Leave time the member has not utilized or cannot utilize shall not be credited toward the member’s support.
- (6) Support charges for the member on ~~furlough wishing~~ leave who wishes to retain the member’s room or bed shall be due and payable as though the member were in residency as set forth in paragraph 10.36(1)“~~d.~~”“c.”

ITEM 16. Amend paragraph **10.36(1)“g”** as follows:

~~g. f.~~ When a member is on ~~pass leave~~, the member shall remain on in-house status for the first 12 leave days per calendar year for DVA per diem purposes and IVH shall be financially responsible for medical expenses unless these are assumed by the member or legal representative in relation to choice of medical facility.

ITEM 17. Amend paragraph **10.36(1)“h”** as follows:

~~h. g.~~ When a member ~~is on furlough~~ has used 12 non-hospital leave days, IVH is not financially responsible for any medical charges for the member.

ITEM 18. Amend paragraphs **10.36(2)“a”** and **“b”** as follows:

- a. Members are free to leave IVH grounds unless contraindicated by medical determination. In cases where it is determined to be medically contraindicated and a member chooses to leave, the member or legal representative must sign “Discharge/~~Furlough~~ Leave Against Medical Advice,” Form 475-0940.
- b. A ~~pass or furlough~~ leave as set out in paragraph 10.36(1)“~~b~~”(~~whichever is appropriate~~) is required if a member expects to be absent past midnight. ~~Free time does not apply to Title XIX members.~~

ITEM 19. Amend paragraph **10.40(2)“a”** as follows:

- a. ~~A period of counseling from an appropriate staff member.~~ For a first offense, a member is counseled by an appropriate staff person and options for correcting the behavior are considered. Options may include but are not limited to:
 - (1) Funds restriction.
 - (2) Substance abuse treatment.
 - (3) Mental health services.

ITEM 20. Reletter paragraph **10.40(2)“c”** as **10.40(2)“d.”**

ITEM 21. Adopt the following new paragraph **10.40(2)“c”**:

c. For a second offense, a member is offered the services above and is placed on probation that warns a third offense may lead to discharge.

ITEM 22. Amend relettered paragraph **10.40(2)“d”** as follows:

d. ~~Discharge~~ For a third offense, discharge from IVH in accordance with subrule 10.40(3).

ITEM 23. Amend subrule 10.40(3) as follows:

10.40(3) The steps described in subrule 10.40(2) shall generally be followed in that order. However, if the member’s violation is of an extreme nature and the member is not amenable to counseling, the commandant or designee shall choose to discharge the member after the expiration of a 30-day written notification period which begins when the notice is personally delivered. If the IRCC, in conjunction with the medical provider and mental health personnel, deems that the member’s behavior poses a threat of imminent danger, the commandant may issue notice of an immediate involuntary discharge. In such an emergency situation, a written notice shall be given prior to or within 48 hours following the discharge.

The member’s county commission of veterans affairs and the legal representative shall be informed in writing of the decision to discharge. Written notification shall also be issued to appropriate governmental agencies including the commission, the department of inspections and appeals, and the department ~~of elder affairs~~ on aging’s long-term care ombudsman to ensure that the ~~member shall not be in danger of~~ member’s health, safety or welfare shall not be in danger upon the member’s release.

ITEM 24. Adopt the following new rule 801—10.43(35D):

801—10.43(35D) Rule enforcement—power to suspend and discharge members. The commandant shall administer and enforce all rules adopted by the commission, including rules of discipline and, subject to these rules, may immediately suspend the membership of and discharge any member from IVH for infraction of the rules when the commandant determines that the health, safety or welfare of the members of IVH is in immediate danger and other reasonable alternatives have been exhausted. The suspension and discharge are temporary pending action by the commission. Judicial review of the action of the commission may be sought in accordance with Iowa Code chapter 17A.

10.43(1) The commandant shall, with the input and recommendation of the IRCC, involuntarily discharge a member for any of the following reasons:

a. The member has been diagnosed with a substance use disorder but continues to abuse alcohol or an illegal drug in violation of the member’s conditional or provisional agreement entered into at the time of admission, and all of the following conditions are met:

(1) The member has been provided sufficient notice of any changes in the member’s collaborative care plan.

(2) The member has been notified of the member’s commission of three offenses and has been given the opportunity to correct the behavior through either of the following options:

1. Being given the opportunity to receive the appropriate level of treatment in accordance with best practices for standards of care.

2. By having been placed on probation by IVH for a second offense.

Notwithstanding the member meeting the criteria for discharge under paragraph 10.43(1)“a,” if the member has demonstrated progress toward the goals established in the member’s collaborative care plan, the IRCC and the commandant may exercise discretion regarding the discharge. Notwithstanding any provision to the contrary, the member may be immediately discharged under paragraph 10.43(1)“a” if the member’s actions or behavior jeopardizes the life or safety of other members or staff.

b. The member refuses to utilize the resources available to address issues identified in the member’s collaborative care plan, and all of the following conditions are met:

(1) The member has been provided sufficient notice of any changes in the member’s collaborative care plan.

(2) The member has been notified of the member’s commission of three offenses and the member has been placed on probation by IVH for a second offense.

Notwithstanding the member meeting the criteria for discharge under paragraph 10.43(1) “b,” if the member has demonstrated progress toward the goals established in the member’s collaborative care plan, the IRCC and the commandant may exercise discretion regarding the discharge. Notwithstanding any provision to the contrary, the member may be immediately discharged if the member’s actions or behavior jeopardizes the life or safety of other members or staff.

c. The member’s medical or life skills needs have been met to the extent possible through the services provided by IVH and the member no longer requires a residential or nursing level of care, as determined by the IRCC.

d. The member requires a level of licensed care not provided at IVH.

10.43(2) Provisions for member following discharge from IVH.

a. If a member is discharged under this rule, the discharge plan shall include placement in a suitable living situation which may include but is not limited to a transitional living program approved by the commission or a living program provided by DVA.

b. If a member is involuntarily discharged under this rule, the commission shall, to the greatest extent possible, ensure against the member being homeless and ensure that the domicile to which the member is discharged is fit and habitable and offers a safe and clean environment which is free from health hazards and provides appropriate heating, ventilation and protection from the elements.

10.43(3) Discharge notice, including right to appeal. An involuntary discharge of a member under this rule shall be preceded by a written notice to the member. The notice shall state that, unless the discharge is an immediate discharge due to the member’s actions or behavior which jeopardizes the life or safety of other members or staff, the effective date of the discharge is 30 calendar days from the date of receipt of the discharge notice, and that the member has the right to appeal the discharge. In addition, the discharge notice shall contain:

a. The stated reason for the proposed discharge or transfer.

b. The actual effective date of the proposed discharge or transfer.

c. A statement in not less than 12-point type which reads: “You have a right to appeal the facility’s decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Commission of Veterans Affairs (hereinafter referred to as “Commission”) within five (5) calendar days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held, and a decision rendered within ten (10) calendar days of the filing of the appeal. Provision may be made for extension of the ten (10) day requirement upon request to the Commission designee. If you lose the hearing, you will not be discharged or transferred before the expiration of 30 days following receipt of the original notice of the discharge or transfer, or no sooner than five (5) days following final decision of such hearing. To request a hearing or receive further information, call the Commission or write to the Commission to the attention of Chairperson, Commission of Veterans Affairs.”

10.43(4) Appeal by member.

a. If a member appeals the discharge under this rule, the member shall be provided with the information relating to the appeals process as specified in rule 801—10.47(35D).

b. If a member appeals the discharge under this rule, the involuntary discharge appeal process in rule 801—10.47(35D) shall apply.

10.43(5) By the fourth Monday of each session of the general assembly, the commandant shall submit a report annually to the senate veterans affairs committee and the house veterans affairs committee specifying the number, circumstances and placement of each member involuntarily discharged from IVH under this rule during the previous calendar year.

10.43(6) Any involuntary discharge by the commandant under this rule shall comply with the rules adopted by the commission and by the department of inspections and appeals pursuant to 2009 Iowa Acts, Senate File 407, section 2.

ITEM 25. Adopt the following new rule 801—10.47(35D):

801—10.47(35D) Involuntary discharge appeal. When a member appeals an involuntary discharge, the following provisions shall apply:

10.47(1) The member shall file the appeal with the commission within 5 calendar days of receipt of the discharge notice.

10.47(2) The commission shall render a decision on the appeal and notify the member of the decision in writing within 10 calendar days of the filing of the appeal.

10.47(3) If the member is not satisfied with the decision of the commission, the member may appeal the commission's decision by filing an appeal with the department of inspections and appeals within 5 calendar days of being notified in writing of the commission's decision.

10.47(4) The department of inspections and appeals shall render a decision on the appeal of the commission's decision and notify the member of the decision in writing within 15 calendar days of the filing of the appeal with the department.

10.47(5) The maximum time period that shall elapse between receipt by the member of the discharge notice and actual discharge shall not exceed 55 days which includes the 30-day discharge notice period and any time during which any appeals to the commission or the department of inspections and appeals are pending.

10.47(6) If a member is not satisfied with the decision of the department of inspections and appeals, the member may seek judicial review in accordance with Iowa Code chapter 17A. A member's discharge under rule 801—10.43(35D) shall be stayed while judicial review is pending.

ITEM 26. Amend subrule 10.56(3) as follows:

10.56(3) Pets are not allowed inside the cottages without prior authorization. Visitors who bring pets must comply with IVH rules regarding pet health and safety. Visitors may maintain portable pet kennels outside.

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